UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JANE DOE, LUKE LOE, RICHARD ROE, MARY MOE,

Plaintiffs,

v. 18 CV 9936 (LGS)

THE TRUMP CORPORATION, DONALD J. TRUMP, DONALD TRUMP JR., ERIC TRUMP, IVANKA TRUMP,

REMOTE TELECONFERENCE

Defendants.

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New York, N.Y.
April 9, 2020
10:55 a.m.

Before:

HON. LORNA G. SCHOFIELD,

District Judge

APPEARANCES

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ALSO PRESENT: DANIEL FLORES, In-house Counsel (MGM)

(Remote teleconference)

THE COURT: Hi, it's Judge Schofield.

(Case called)

THE DEPUTY CLERK: Before we begin, I'd like to remind the parties of several rules and restrictions that are in effect due to the novel coronavirus.

First, while members of the press and public have a presumptive access to this proceeding, either live or telephonically, recording or broadcasting of this proceeding is still prohibited by policy of the Judicial Conference of the United States. Violation of these prohibitions may result in sanctions, including removal of court-issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions being necessary by the Court.

Second, we have a court reporter. Your appearances have been noted for the record. But in order to maintain an accurate record, I'm going to ask each counsel to please state your name before you speak, each time you speak.

And we're here before The Honorable Lorna G. Schofield.

THE COURT: Good morning.

Before we start, could you tell me for the plaintiffs, who will be speaking?

MR. QUINN: Yes, your Honor. Good morning.

It's John Quinn from Kaplan, Hecker & Fink.

I'll take the lead on behalf of plaintiffs today, as to one of the motions before the Court relating to ACN and our motion to compel discovery. There may be certain details where my co-counsel, Mr. Wilson, will jump in and provide some of those details; but otherwise, I'll take the lead on behalf of plaintiffs today.

THE COURT: Okay. Thank you.

And who will be speaking on behalf of defendants?

MS. HENDON: Good morning, Judge. It's Joanna Hendon for Spears & Imes.

THE COURT: Good morning.

And who will be speaking on behalf of ACN?

MS. NIEHAUS: Good morning, your Honor.

This is Stephanie Niehaus from Squire Patton Boggs.

THE COURT: Okay. Good morning.

And who will be speaking on behalf of the MGM entities?

MS. STEBBINS BINA: Good morning, your Honor.

This is Jessica Stebbins Bina of Latham & Watkins.

I'll be speaking.

THE COURT: All right. Thank you. And is there any other counsel on the line who intends to speak? For example, do we have counsel on behalf of Ms. Butcher?

No. Okay. Then let's proceed.

Let me tell you what I wanted to do here, what the

agenda is, and then we can start.

First, I think everybody is probably aware of my decision yesterday denying the defendants' motion to compel administration; that will obviously affect some of our discussion today.

As far as agenda items, we have the matters involving ACN. Principally, it is plaintiffs' motion to compel production by ACN, which, of course, is not a party to this action; ACN is a third party.

We also have two disputes that were separately raised by ACN. One is ACN's request for relief from my order; and then subsequently the protective order permitting plaintiffs to proceed anonymously. And the other additional ACN matter involves their application to quash the subpoena of Anne Butcher, with whom they have a contractual relationship.

So those are the ACN issues.

Next, I wish to address the MGM subpoena issues, plaintiffs' motion to compel production by the nonparty MGM entities.

And third, I would address defendants' application to revisit the issue of the plaintiffs proceeding under pseudonym.

So let (inaudible) the ACN issue and plaintiffs' motion to compel production by nonparty ACN.

First, let me say, I have your various submissions. I have reviewed them. But I will hear from you briefly if you

would like to be heard. Since it's plaintiffs' motion, I'll hear from the plaintiff first.

MR. QUINN: John Quinn from Kaplan Hecker.

And thank you, your Honor.

Plaintiffs' motion to compel discovery from ACN is a straightforward discovery motion that should be granted. As I mentioned at the top of the conference, my co-counsel, Mr. Wilson, of Emery Celli, can address some of these issues in greater detail.

But by way of introduction, I would note that ACN has been in receipt of a Rule 45, subpoena pursuant to the jurisdiction of this Court, since September of 2019. ACN has categorically refused to produce a single document or to negotiate on scope, even after the Court ordered it to do so.

ACN is a critical nonparty that is in unique possession of highly relevant material relating to what defendants said about ACN, whether it was true or false, and the size and scope of the class of victims that that fraud affected. And ACN's burden arguments are entirely unsubstantiated and insufficient.

I'd be happy to address in more detail, your Honor, any aspects of those specific issues which I think get quickly tied up in ACN's principal objection, which has to do with its cross-motion to compel arbitration.

THE COURT: Okay. I understand your arguments as to

the subpoena itself. I remind you that the principal argument of ACN is that the dispute over the subpoena needs to be arbitrated. So if you would like to briefly address that, again, I I've read your (inaudible), but feel free to give me a brief summary.

MR. QUINN: Thank you, your Honor.

And again still, for transcript purposes, John Quinn of Kaplan Hecker.

ACN's cross-motion to compel arbitration fundamentally misapprehends the jurisdiction of this Court and ACN's role as a nonparty subpoena recipient in this action, as ACN's complete lack of supporting case law underscores. To the contrary, Chief Judge McMahon's decision in *Baleron* really is the beginning and the end for ACN in this motion. Chief Judge McMahon said forcefully and clearly in that decision, and I quote: "No American court of which I am aware would ever accept that a party to an arbitration was shielded by arbitrable rule from producing evidence in an American lawsuit pursuant to a discovery demand or subpoena."

But let me say just a little bit more.

ACN describes the scope of its requested relief a little inconsistently in its papers. Sometimes it seems to be asking the Court to compel this entire case into arbitration; and other times it seems to be seeking that the Court cleave off its discovery obligations and compel just that issue into

arbitration.

I'll briefly address each of those requests, both of which are squarely at odds with basic principles of law.

First, a nonparty like ACN simply cannot walk into a lawsuit between other parties and seek to compel their dispute into arbitration. ACN hasn't cited and we haven't found a single case in which any court has ever issued an order like that. The only authority that does bear on that issue holds that a nonparty lacks standing to compel an action between other parties into arbitration. For example, the *Andrews* case, 2015 Westlaw 7770681, strikes a motion to compel from a nonparty based on its nonparty status.

Turning to the other formulation of ACN's request, a nonparty cannot somehow cleave off and compel arbitration of its discovery obligations under a valid Rule 45 subpoena. The Judiciary Act of 1789 gave federal courts power over nonparty discovery. As early as 1911, in the *American Lithograph* case, the Supreme Court recognized that authority as essential to the very existence and Constitution of a court of common law.

In the *Morton Salt* case in 1950, the court was clear that that power derives from and is coextensive with a federal court's power to decide the cases and controversies properly before it. So ACN's discovery obligations can't be cleaved off; they are not separate from this Court's power to decide and preside over this case.

I already mentioned Judge McMahon's decision in the *Baleron* case.

Judge Kaplan's decision in the *Garlock* case may be even more squarely analogous on the facts.

Just very briefly, in that case, Ernst & Young had developed certain innovative new tax shelters called contingent deferred swaps or CDS. And Ernst & Young engaged a law firm to issue opinion letters stating that this new tax shelter was more likely than not to survive IRS scrutiny. Plaintiff purchased these shelters in reliance on those opinions and sued the law firm, alleging malpractice, breach of fiduciary duty, and other claims. And then they served a subpoena on Ernst & Young, seeking evidence as to whether Ernst & Young genuinely believed that these shelters would survive scrutiny.

Judge Kaplan upheld that subpoena. Ernst & Young had argued that it had arbitration agreements with plaintiff purchasers, and that those arbitration agreements somehow modified or prevented nonparty discovery in the plaintiff's lawsuit against the law firm.

Judge Kaplan, as well as two federal courts in California, rejected that argument out of hand. And Judge Kaplan squarely held that a nonparty's arbitration agreement with the plaintiff -- and again, I quote, "plainly has no bearing upon the availability of discovery against it as a nonparty witness in an action against another entity."

THE COURT: I'm going to stop you there, only because we have a long agenda and I understand the argument.

So thank you.

I'd like to hear from ACN now.

MS. NIEHAUS: Yes. Good morning, your Honor.

You know, I think the unprecedented --

THE COURT: Wait, wait, wait. Sorry. I'm sorry.

Every time you speak you need to say who you are. I know this is (inaudible).

MS. NIEHAUS: My apologies.

This is Stephanie Niehaus, on behalf of ACN.

Your Honor, quite frankly, the case law that the plaintiffs have cited in all of their filings is inapposite. The *Veleron* case, they cherry-picked a quote. The *Garlock* case is also distinguishable in that ACN has attempted to file arbitrations here, and that is bound up in our request, as you know, for relief from the Court's orders allowing the plaintiffs to proceed under pseudonym.

THE COURT: Let me ask this: First of all, there does seem to be a little bit of ambiguity, as Mr. Quinn pointed out, as to your position. I guess I had assumed that you were simply seeking to compel arbitration of this dispute, and that you were not somehow trying to suggest that you had standing to move the entire dispute to which you are not a party to arbitration. But could you confirm that?

MS. NIEHAUS: Well, your Honor, I mean, I think that there's a line somewhere, and the plaintiffs have made that difficult in the way they've positioned this case procedurally.

But we do believe that any dispute with ACN would come within the arbitration provision in the IBO agreement. So that certainly extends to the dispute that plaintiffs have raised in this Court over the appropriate scope of discovery and what they are able to compel from ACN. But it also goes really to the entire matter, given that the entire matter implicates a dispute with ACN. And that has just become evident with the plaintiffs' motion to compel and the position that they've taken on that. So the motion to compel does extend to --

THE COURT: Wait, wait, wait.

You're not disputing though that ACN is not a party to the lawsuit before me; and that ACN, therefore, has no standing to make an application to move the dispute into some other forum, or are you?

MS. NIEHAUS: Well, we certainly don't dispute that ACN is a nonparty. And that also is bound up in the discussion over the appropriate scope of discovery here.

But the complaint that plaintiffs have filed and the way they have approached the discovery with respect to ACN really highlights that there is a greater dispute here with ACN, whether or not they've brought claims. And it's clear that that was strategic to avoid their contractual obligations

to ACN. So, you know, fundamentally, it may be that the entire dispute needs to be heard before an arbitrator.

THE COURT: I assume you've seen my ruling. Are you aware of any case where a court has compelled arbitration of a dispute on the motion of a nonparty?

MS. NIEHAUS: I am not aware of any such (inaudible), but would appreciate an opportunity to research and brief that, if that's a turning point for your Honor's decision here.

I think this is -- you know, I think both parties have struggled to find applicable case law, because I'm not aware of any situation where parties have so blatantly attempted to avoid their contractual obligations to arbitrate by strategically pleading around them.

THE COURT: Well, I would just say that plaintiffs are entitled to sue whomever they want; and they are not compelled to sue parties who, for whatever reason, they don't -- they don't want to sue. And typically, the parties who are not sued don't complain about not having been sued. So it's an interesting position you're taking.

I think I had one other question. And I guess my other question is similar, but narrower. Are you aware of any cases where a nonparty has persuaded a court that a discovery dispute -- in other words, a third-party subpoena -- has to be arbitrated, and that the Court doesn't have the power of the jurisdiction to do that -- sorry, to adjudicate the third-party

subpoena?

MS. NIEHAUS: I don't think either party here has cited a case on point because, again, I think this is an unprecedented situation. But we certainly have cited case law to your Honor that indicates that the discovery dispute is properly within the scope of an arbitrator's review.

THE COURT: Thank you.

Let me rule then first on this initial issue of whether the discovery dispute should be arbitrated. And my ruling, which you may have guessed by my questions, is that the answer to that question is no, this discovery dispute is properly adjudicated in this Court. And there are principally two reasons:

The first is that the dispute isn't within the scope of the arbitration agreement. We all know that the initial question in any motion to compel arbitration or application to compel arbitration is whether the dispute is within the scope of what is required to be arbitrated. And here, the arbitration clause encompasses only the dispute "as to the respective rights, duties, and obligations arising out of or relating to" the IBO agreement.

Plaintiffs' discovery requests here arise out of and relate to this lawsuit. And the lawsuit is about defendants' purported bad acts, not about plaintiffs' rights, duties, or obligations under the IBO agreement. And therefore, the first

basis for my holding is that the dispute isn't within the scope of the agreement.

The second reason though is that the Court doesn't have jurisdiction to compel arbitration of this discovery dispute. Plaintiffs' case law stating a federal court cannot compel arbitration of claims over which they do not have independent jurisdiction is persuasive to me. A federal court does not have independent jurisdiction over a discovery dispute and, therefore, Section 4 of the Federal Arbitration Act is not available.

I'm relying here or citing *Vaden v. Discover Bank*, 556 U.S. 49, 66, which held that a party seeking to compel arbitration under the FAA may gain a federal court's assistance only if, save for the agreement, the entire actual controversy between the parties as they have framed it could be litigated in federal court.

I am also relying on *Landau v. Eisenberg*, 922 F.3d 495, 497 (2d Cir. 2019), which says Section 4 of the FAA does not enlarge federal court jurisdiction and, therefore, district courts should look through the petition to the underlying substantive controversy to determine whether the claim arose under federal law. Specifically, a district court should assume the absence of the arbitration agreement and determine whether it would have jurisdiction under Title 28 without it.

And so for those reasons, I find that I have

jurisdiction, and I am the adjudicator who must adjudicate this discovery dispute. So that is what I intend to do.

I would also just note that I am not going to accept additional briefing on the issue of compelling arbitration. I would note that if -- well, we'll talk about that later, I suppose. I won't note anything else along those lines right now.

To the extent that ACN is asking me to compel arbitration of the entire dispute because they believe that it is in some way a dispute with ACN, I don't agree with that characterization, and I reject the proposition that they have the standing to do that or that it's appropriate in any way to do that.

So let me move on to another closely related issue before we get to the issue of relevance and overbreadth.

There was an argument by ACN that at least class discovery should be stayed pending any decision on the defendants' arbitration motion because the arbitration provision between ACN and the plaintiffs essentially prohibits -- requires arbitration and prohibits any collective or class proceeding. Since this case will be proceeding in the district court as opposed to arbitration, I think that argument is moot.

So I'd like to turn now specifically to the relevance and overbreadth questions. And I guess what I would like to do

is start by making sure we are talking about the same standard, and that is set forth in Rule 26, which says that the scope of discovery is basically anything that's relevant to a claim or defense, and proportionate to the needs of the case. And the rule lists the various factors. I think they are nonexclusive factors that bear on proportionality.

And so the first question is relevance. And so I heard Mr. Quinn essentially make his relevance argument. I am happy to hear from Ms. Niehaus in response on relevance.

MS. NIEHAUS: Well, your Honor, I think our argument really turns more on the proportionality issue, although we have a couple of additional arguments. I just want to, if I could, go back to the class issue, which I think we have two issues there. And one is a prematurity issue as well, in that we've objected to some of the discovery that plaintiffs have sought from ACN on the basis that it's premature before any class has been certified. And that dispute was outlined in the papers, I think, reasonably well there. So I want to make sure we don't lose sight of that one.

But in terms of relevance, there are a couple of requests that we have objected to in terms of relevance. And the one that comes to mind -- I mean, we're dealing with, you know, quite a few areas of inquiry here, as outlined in the subpoena.

But plaintiffs have sought a tremendous amount of

discovery into ACN's financials, its revenue stream, over an extremely broad period of time. And as we noted in our opposition papers, there's just no discernible relevance between ACN's revenues and whether the various Trump-related defendants defrauded or misrepresented anything about the nature of ACN's business to these individual IBOs.

The tremendous amount of information sought --

THE COURT: Could I ask a question?

And first of all, I acknowledge that you are representing a nonparty. And although the rule applies equally to -- the rule on what is producible applies equally to Rule 45 subpoenas, it seems to me that the fact that you're a third party tips the proportionality analysis somewhat or affects it should be considered in the proportionality analysis. And so I think it's not appropriate to burden third parties with requests that are unduly broad.

But my real question is a process question. I gather that you and the plaintiffs have never really engaged on the issue of trying to narrow the requests so that they are more efficient and responsive. Is that right or am I misunderstanding?

MS. NIEHAUS: I think that's -- we've tried, on a number of occasions, to have discussions. We've hit a couple of fundamental roadblocks, the most significant of which is the protective order language. We had proposed some revisions to

the protective order language. We were not involved in negotiating the protective order. I'm not aware of any authority that suggests that nonparties can't have separate confidentiality orders that are sufficiently protective of their interests as nonparties.

And so we've asked for some revisions to protect ACN's interests, and the plaintiffs have flatly refused those requests, which has prevented us from producing any information. And it's just simply incorrect for Mr. Quinn or any of the other of plaintiffs' counsels to represent that we refuse to produce documents --

THE COURT: Can I -- are the proposed revisions limited to the identity of the plaintiffs or are there other kinds of revisions that you'd asked for?

MS. NIEHAUS: We had proposed some them in-line revisions to the nondisclosure agreement attached as the schedule, I think, to the protective order, in order to preserve ACN's right to pursue arbitration against the IBOs. It was their jurisdictional revision to acknowledge that ACN doesn't submit to the jurisdiction of the Court. And they are aimed, in part, at preserving ACN's right to pursue separate arbitration for breach of the IBO agreement.

And so we have agreed to produce some information in response to the subpoena; we've just been prevented in doing so because we have reached an impasse on the confidentiality

order.

THE COURT: Okay. Thank you for that clarification.

MR. WILSON: Your Honor?

THE COURT: Yes.

MR. WILSON: This is Andrew Wilson, for the plaintiffs. When at the appropriate time I could be heard on the protective order issue.

THE COURT: Well, now is a good time.

MR. WILSON: So, your Honor, the proposed -- we have a protective order in this case, of course; and our position is that it's perfectly suitable to protect ACN's interests. ACN has asserted the objection that it described in its responses and objections to the subpoena. You have those at Bourland Exhibit B, where the first objection that ACN asserts is that anything that it responds in complying with the subpoena they object to, to the extent it implicates their arbitration rights.

But they wanted more, and they proposed their own language at Bourland Exhibit C with a redline. And our position is that requiring the plaintiffs to stipulate and agree that nothing in the nondisclosure agreement impacts ACN's arbitration rights was overbroad and unnecessary. To the extent that the Court prefers, we would agree to an individual NDA and protective order for ACN. But we would ask that any changes to that order simply allow ACN to preserve its rights

rather than require the plaintiffs to stipulate to those rights.

But I think that there's a path forward on the protective order that's either requiring ACN to stand on its objections and using the current protective order, which we think is the simplest course, or to have a protective order solely for ACN, but that that protective order simply allows ACN to assert its objections rather than make any affirmative statements one way or the other about those rights.

THE COURT: Okay. So I think what I'd like to do is -- I think it's premature -- well, give me just a minute.

I think it's premature for me to try to adjudicate particular discovery requests and particular differences concerning the protective order.

I would say a couple of things.

First, I think it's clear that some of plaintiffs' requests are overbroad. Frankly, that's not unusual; usually the requests are a starting place for serious negotiation, and I gather that that negotiation was thwarted here, in part, because of the protective order.

So let me just say that I'd like you to go talk to each other about the protective order. I don't think it's unreasonable for ACN to ask for certain additional or different provisions in its protective order, given its different positions *vis-à-vis* the plaintiffs, *vis-à-vis* the lawsuit.

I also think that it's perfectly reasonable for ACN to want to preserve its rights and not concede anything in complying with the subpoena. But I also think that it's perfectly appropriate for the plaintiffs not to have to concede anything in the course of agreeing to the confidentiality terms over ACN's actions. And so what I do -- I ask the parties to go back and discuss that.

Since it's been raised, let me also talk about the class certification issue. I know that the position of ACN is that class discovery is premature (inaudible) class is certified. I agree to some extent, but I think it's more nuanced than that. I think the law is pretty clear that at least some initial class discovery is appropriate in part so that the class certification motion can be made. And so I would ask the parties to confer with each other about class discovery that is appropriately cabined for the stage of the litigation that we're in.

And then with respect to the actual production of documents, I will order the parties to meet and confer, but with the understanding that ACN needs to produce relevant documents consistent with the dictates of Rule 26 concerning the scope of discovery. And I would also suggest that the parties consider, rather than just voluminous document productions, whether there might be more efficient ways for ACN to provide some of the relevant information or to provide only

relevant information and not information that is -- really has no bearing on the lawsuit. So, for example, interrogatory (inaudible) or a summary chart or something of that nature might be more appropriate than a large document production on particular topics.

So what I'd like you to do is go back, meet and confer on that. Give me a letter in two weeks and tell me where things stand. And I'll figure out whether we need to meet again. I am hoping not. I am hoping that with this framework, that the parties can talk to each other and be reasonable in addressing what the scope of discovery should be. Various lawyers usually can do that after they get over, sort of, the threshold fundamental issues.

Let me just say something about the time frame of the documents that need to be produced. I know it's been a point of contention. I'd like the parties to meet and confer on this as well. But I would say that the time frame applicable may well vary depending on the request.

And just as an example, if the request is about the nature of the relationship between ACN and defendants, then information about the commencement and evolution of the relationship would seem to me to be relevant. On the other hand, if the request is about marketing materials, then limiting the time period to the class period would seem to be relevant. And so I would ask you to consider the appropriate

time frame with respect to individual requests and the relevance of the time frame with respect to that request.

Any questions?

MR. QUINN: No questions from the plaintiffs, your Honor. And we understand and appreciate the Court's guidance on all of those matters.

THE COURT: Okay.

MR. WILSON: Your Honor, I actually -- this is Andrew Wilson, for the plaintiff.

I do have one clarifying question.

THE COURT: Yes.

MR. WILSON: Your Honor's ruling is quite clear that it's appropriate to have discovery at this stage concerning class issues. And I just wanted to draw our attention to the fact that the timing objections that ACN has asserted are really limited to only ten of the requests; and they are requests that seek data that directly relate to class issues: The numbers of people who applied, who signed up, and related financial terms.

And so I just wanted to be clear that as we meet and confer, we certainly have heard the Court and will work with ACN to narrow the requests. But as a category, those requests, namely, numbers 22 to 32, that deal with classwide issues, are appropriate for discovery. Because I think that --

THE COURT: Well, let me just interrupt here and I'll

clarify my thinking.

I'm not looking at your particular requests, so I'm not going to bless them in the way they are stated. But what I would say is that there are well-understood requirements of what you need to show in order to obtain class certification, including things like numerosity. And so issues that go to the requirements of Rule 23 I would think are fair game at this point.

In terms of proving the merits of your case, independent of Rule 23 considerations, with respect to a class, I think, might appropriately wait for determination on class certification. But I'm willing to hear argument as to any particular issue you can't agree on.

But what I'm really trying to do is since basically nothing has happened so far between the plaintiffs and ACN, I would like to just get the ball rolling, get something started. And if there are additional things that need to be picked up at some later point, we can do that. Okay?

MR. WILSON: This is Andrew Wilson, for the plaintiffs. Thank you very much, your Honor.

THE COURT: Okay. So now what I'd like to turn to is ACN had requested release from the order permitting plaintiffs to proceed anonymously so that ACN can commence arbitration proceedings against them. And I gather from Ms. Niehaus's comments earlier, that the nature of that is for breach of the

IBO agreement. Is that right, Ms. Niehaus?

MS. NIEHAUS: Yes, primarily. I mean, I think we have some additional potential causes of action and requests for relief in arbitration; but, yes, we view plaintiffs as being in breach of the IBO agreement on several grounds.

THE COURT: Okay. And I'm curious, what are those grounds? Are they divorced from what's going on in the lawsuit or related?

MS. NIEHAUS: They are related. And I am a little circumspect here because I'm aware that there are members of the press on the line here. And as was indicated in some of our previous filings, I mean, one of the fundamental issues here is that ACN bargained for private arbitration; and so, you know, we view those issues as being, you know, within that private realm.

THE COURT: Okay. I understand what you're saying.

So I've read your submissions. And what I'd like to do is rule on them and then perhaps make a comment.

Basically, I don't believe that ACN has standing to ask for relief basically that, in this lawsuit, the plaintiffs should not be proceeding anonymously. That is based on *AT&T Corp. v. Sprint Corp.*, 407 F.3d 560, 562 (2d Cir. 2005), which says that permissive intervention is the proper method for a nonparty to seek modification of a protective order.

But (inaudible) that although I don't think you have

standing to change the terms on which the case is being litigated, that is, plaintiffs being disclosed or not, I think you and the plaintiffs certainly have the power to negotiate whatever terms you think are appropriate in the protective order. As I gather from a very brief look at what the plaintiffs want, it didn't look as though they were asking for plaintiff-specific materials and, therefore, it may not even be an issue that arises in your own negotiations.

But, in any event, to the extent that you're asking me for relief at this time that is broader than the scope of your protective order, I'm going to deny that.

Then -- yes.

MS. NIEHAUS: May I actually request reconsideration of that? I think that the permissive intervention framework is slightly misplaced. And I read through plaintiffs' submission, and that was my reaction to it. Because in those cases and amici and key (ph) cases, specifically on the other cases cited, the Court was addressing a request of a complete stranger to the litigation to essentially clone discovery for purposes of another case, and found that permissive intervention was the correct procedural mechanism there.

In this case, we've already been dragged into this litigation; we're properly before the Court. And what we are asking for is very limited relief, not broad relief from the protective order, but very limited relief for the Court to

require the plaintiffs to disclose their identities to ACN so that ACN can vindicate its contractual rights. In this case, the plaintiffs are using the Court's order allowing them to proceed under aliases as both a sword and a shield. And it's fundamentally unfair, and it compromises -- considerably compromises ACN's contractual rights.

THE COURT: Let me address that in two ways.

First, the motion for reconsideration is denied.

In my view, ACN is a stranger to these proceedings. You are really just a witness here. And what you're asking for is some kind of relief that is independent of your role in the litigation. Your role in the litigation is simply as a third-party witness. What you're asking is for me to compel the plaintiffs to disclose their identity to you for reasons that have nothing to do with this litigation so that you can commence a separate lawsuit against them, which that doesn't seem appropriate to me here.

However, what I will also say is I don't really have any interest, as the judge presiding over this lawsuit, in whether or not you arbitrate or don't arbitrate or commence arbitration proceedings against the plaintiffs. You have an agreement with them; it's certainly within your right to do that.

And what we'll discuss in a few minutes is the issue of whether the plaintiffs can continue to proceed anonymously

in this case. The question of the impact on third parties may be relevant to that discussion.

So let me just leave it at that.

The last dispute directly related to ACN is ACN's application to quash the Anne Butcher subpoena. But I think that was filed just yesterday. I don't have a response from plaintiffs; I don't have a response from Butcher. So I'm going to table that and ask for a letter response from both. And I'll put that in the written order that follows today's proceeding.

MS. HENDON: Your Honor, I'm sorry, it's Joanna Hendon for the defendants. I did not mean to interrupt, but I wanted to be heard on the last issue, if I might, before we turn to another one.

THE COURT: Sure.

MS. HENDON: As your Honor is aware, the defendants joined in ACN's request for relief from the protective order. We also separately made the application that you've alluded to, that plaintiffs be required to revisit the pseudonymity question more broadly.

But on the first issue that was just discussed, the defendants obviously have an interest here, because we have largely plaintiff-specific discovery that we need from ACN. And our ability to get any of that at all is defeated by ACN's ability -- inability at this time, given the terms of the

protective order, to comply and provide either side with plaintiff-specific discovery.

So while I think --

THE COURT: I'd like to just interrupt you for a minute.

I had intended to talk about your application that plaintiffs no longer proceed under pseudonyms a little bit later. But since you've raised it, let me just say that I -- first of all, just to review the history of this, I had made a ruling with findings allowing the plaintiffs to proceed anonymously, but that was a ruling that was limited to the period before the decision on your motion to dismiss. And then the parties agreed to a protective order that, in effect, continued that practice. And as I understand it, the defendants now want to revisit that for the reasons that you've just explained.

I understand that the plaintiffs oppose that; they view it as a motion to reconsider; they think it is not appropriate now. I don't agree with that. I think that it is an issue that is fairly raised at various points in the litigation, because I think that the propriety of allowing the plaintiffs to proceed anonymously varies at different points in the litigation.

What I would like to do is I would like you to talk to each other again, and meet and confer on the issue of whether

they should be able to proceed anonymously and, if so, to what extent. Either the current protective order strikes a middle ground between complete public disclosure of their identity and having no one know who they are.

And so what I'd ask is for you to revisit the question now, given the state of litigation, given the need for the defendants to obtain plaintiff-specific discovery. Given the impact on third parties like ACN, I'd like you to talk about that, and then give me a letter in -- what should we say -- two weeks, telling me what your -- where you are on that. What I'm hoping is that you will agree to a new protective order that takes into consideration some of these factors.

To the extent that you can't, then at that point I might want to hear about specific issues; because at the moment the arguments are quite broad. And then we'll take it from there. But I'd like you to talk to each other first, with the guidance that I've just given you.

MS. HENDON: That's fine.

It's Joanna Hendon, your Honor.

I just wanted to say two things.

We objected very strongly to the terms of the protective order that your Honor ultimately signed. And also, just to be very clear, we will, of course, meet and confer with plaintiffs on these issues and follow your Honor's guidance.

But the core and critical issue for us, so nobody is

surprised, is our ability to give the names that we have to ACN, because that is the key and core repository of plaintiff-specific information. And it's going to be our ability to reach agreement on that point -- as well as others -- but critically on that point, that is going to, I think, drive whether there's agreement or not. We just can't proceed without that.

THE COURT: What I hear you telling me is that it is unlikely you're going to reach agreement for all the reasons we've been talking about this morning.

But I'd like you --

MS. HENDON: That's my concern.

THE COURT: It is my concern, as well. I have seen parties who negotiate in good faith accomplish incredible things, and that's what I'm hoping will happen here.

So to the extent you can't agree, obviously I will rule. But I respect your clients' need to get discovery about the plaintiffs, and I think the plaintiffs understand that.

MR. QUINN: Your Honor, if I may just very briefly, we do and we will certainly work with defendants and with ACN to try to resolve these issues. I do have some optimism that we might be able to do so.

I think from plaintiffs' perspective, at a fundamental level, there is simply a sharp distinction between facilitating discovery in this case, where we are willing to work with

defendants and ACN, and we understand why defendants do want to provide confidential information to ACN to facilitate plaintiff-specific discovery, and we've got no conceptual problem with that. And we've already expressed some openness to ACN's specific reservations in the protective order NDA.

But there's a sharp distinction between that, where I think we can hopefully find some agreement, versus modifications designed to facilitate a separate arbitration which we don't believe is an appropriate purpose for modification or for the provision of confidential identity information.

So within that framework, we're very happy to negotiate with both ACN and defendants, and we will do so and report to the Court.

MS. NIEHAUS: This is Stephanie Niehaus, for ACN.

On that point, I think we also are going to have a fundamental problem because, you know, I understand your Honor saying that the Court is really not concerned with whether or not ACN proceeds with arbitration against the plaintiffs. But it is the Court's current order and plaintiffs' unwillingness to disclose their identities that is standing in the way of ACN initiating those arbitrations. It is the only thing standing in the way of ACN initiating those arbitrations. And if plaintiffs are not willing to disclose their identities so that we can file those claims, we will need the Court's

intervention.

THE COURT: I understand.

I don't view it as my role to facilitate your filing of claims. But I also don't view it as my role to create barriers that are solely to prevent you from filing your claim. That is something that is not in my domain or jurisdiction. That is subject to your arbitration agreement, and I don't intend to interfere with that.

And so what I would like to do is just focus on the case that is before me, what the legitimate needs of the parties are for discovery -- some of that means discovery from you -- and then we'll take it from there. So let's not get ahead of ourselves.

But I just want to be clear to the plaintiffs, as well, that I don't view it as my role to help you prevent any arbitration against the plaintiffs by ACN, or vice-versa, to promote it.

So I think that means we're done with the ACN issues.

I'd like to move on to the MGM subpoena now.

And let me just find my appearance sheet here. We have Ms. Stebbins Bina, right?

MS. STEBBINS BINA: Yes, your Honor.

THE COURT: Okay. So just to tee it up, I know that plaintiffs have brought a motion to compel your clients, which I'm going to call the MGM entities, to produce certain

materials; and that over the course of months, the parties -- or the plaintiff has narrowed that request to certain off-screen footage -- in other words, footage that was ever aired -- of two television episodes of the *Celebrity Apprentice*, where ACN featured. And one was in March 2009, and one was in March 2011.

And I understand that the MGM entities oppose the request primarily on relevance and burden grounds.

So let me begin with a question to Ms. Stebbins Bina:

Has your client made an effort to actually locate the tapes that are at issue here, so that we are not talking hypothetically, but about reality?

MS. STEBBINS BINA: Your Honor, we have not gone to look for these specific tapes, but we have engaged in this exercise in connection with other litigations. So we have a very good sense of what it involves.

Part of why we are resisting this discovery is to attempt to avoid what is the very time-consuming and cumbersome effort of locating the file that might be on point. Each episode has hundreds of audiovisual files. And because they were produced over a decade ago by a company that MGM later acquired, they are in a variety of formats and they are not labeled.

We can find the ones for these episodes, but in order to find which ones might have the ACN witnesses on them would

actually involve the very burden we are trying to avoid, i.e., reviewing hundreds of hours of footage for each episode.

THE COURT: So I guess, just to cut to the chase on -- well, let's cut to the chase on that. Because as we know, the plaintiffs have offered to basically pay for whatever the costs are of producing -- or at least the reasonable cost of producing these materials.

I understand you're saying that -- the issue isn't really one of dollars -- although time ultimately translates into money -- but it's that it would take a long time. And I guess what I don't understand is, so there are hundreds of hours of video footage that were created for the March 2009 episode, and the same for the March 2011 episode. And only a little bit of that was put together, spliced together, to create the episode, and the rest is all just off-screen footage. Is that right?

MS. STEBBINS BINA: The rest has never aired, your Honor. There's a variety of kinds of footage, right. Some of it is portions of the footage that was aired, like, for instance, someone might say something, and then, you know, it didn't quite sound right, so it's repeated, and things like that.

There is all of the footage of the contestants completing their tasks. There are multiple camera angles for most scenes; so at any point when everyone is in one room,

there won't be just one camera on them, there will be two or three or four cameras; there will also be simultaneous audio footage going.

So to find, for instance, let's say, a 30-minute set of footage where Mr. Trump and the ACN executives were in a room together, might involve, you know, a half a dozen different video and two or three different audio clips, all of that same -- that same scene at the same time, if that gives you some idea.

THE COURT: Here's what I don't understand: It seems to me that an argument can be made that all of the footage has some potential relevance to the claims and defenses here. Why not just take these hundreds of hours of footage for these two episodes -- because you said you could find those -- you know, put them in a room with the plaintiffs' representatives, and put a paralegal in the room or some other -- you know, some junior lawyer, somebody who can make sure that nothing is tampered with, and then let the plaintiffs figure out what is relevant. Because we're not talking about, I think, anything sensitive here; we're just talking about hundreds of hours of footage, most of which was deemed to be not useful (inaudible).

MS. STEBBINS BINA: Your Honor, there was some interference on the line; I didn't hear the last bit of what you said. I'm not sure if someone went off mute.

THE COURT: I think you get my gist. Why not just let

the plaintiffs figure that out?

MS. STEBBINS BINA: Well, so, your Honor, it's not quite that simple. We need to rent the machines, we need to find a location, we need to get -- there's several different kinds of machines that will need to be rented. My clients' offices are currently shut down for the foreseeable future for COVID-19. So it's not clear that this process could even begin for probably two months. So there are a number of logistical barriers.

There's also some issues -- because both of these episodes were of the *Celebrity Apprentice*, and there are a number of contractual obligations to celebrity participants about when and how their footage could be shown, and to whom it could be shown and things of that nature, that do weigh on the privacy interests of persons who are not at issue in this litigation at all.

So to avoid any of those issues, I think it would need to be reviewed first by my clients in order to essentially bring out only those portions that deal with the ACN witnesses, and not, you know, either contestants on the show or other celebrities on the show, all of whom have privacy issues in terms of their footage being shown. So those are some of the concerns.

Your Honor, I'd also like to be heard on the question of relevance, because I think we tie in the question under Rule

26 of relevance and proportionality. And obviously, the greater the relevance, the lower the burden -- the less weight a burden objection has.

THE COURT: Let me just preempt that, because I actually had a question for the plaintiffs.

And that is that, as I understand it and as has been represented here, the defendants did not make any of the editing decisions with respect to the tapes; and that the so-called actual producers of the show were the ones who were responsible for the editing. And if that's the case, then what is the relevance of these tapes?

MR. QUINN: Your Honor, this is John Quinn, again, from Kaplan Hecker.

I think the answer to that is twofold:

First and foremost, while line producers might have actually made the edits themselves, the defendants were producers and co-owners of the show; these line producers worked for them. And Mr. Trump in particular was an executive producer of the show, was their boss. So these are defendants' agents making editing decisions, and those decisions are relevant.

Even beyond that, as MGM itself acknowledges in the Edwards declaration at ECF 175, paragraph 8, Mr. Trump himself did offer at least some editorial input. You know, they argue it was just a little bit, it was --

THE COURT: But I thought the editorial input was about the boardroom scenes.

MR. QUINN: It may have been. I think they do say that is usually what the input was about. But those boardroom scenes also include discussion of ACN and its business, or unaired footage might have included more of that.

So any editorial input, direct or indirect, is of extraordinary relevance, given the context, which is that these are seminal moments in the history of ACN; they derive (ph) enormous amounts of recruitment, as ACN's own publicly issued documents have said.

THE COURT: What is the basis for your belief that defendants ultimately controlled the editorial content, regardless of what these producers did, or given what these producers did on defendants' behalf?

MR. QUINN: Again, I think the basis is twofold.

First, it's a matter of public record that Donald J. Trump was an executive producer on the show. And beyond that, Trump Productions was a 50 percent co-owner of the show. So I think for both of those reasons, these line producers ultimately were working for defendants, at least in part.

And I think one additional point, your Honor, on relevance here, which is even beyond the question of editing, we're talking here about video and audio recordings of the defendants and their representative with key ACN executives, in

a room, in person, at the very time that they are shaping the message that will be presented to viewers about ACN. That evidence is highly relevant in and of itself. Defendants were already party to a promotion and endorsement agreement with ACN, which was not disclosed to investors. And here they are in a room where they are crafting a presentation of ACN's business, after which a very small portion of that footage is made public.

THE COURT: Okay. I understand --

MS. HENDON: Could I be heard?

For the defendants, your Honor, Joanna Hendon.

Very briefly.

THE COURT: Let me hear from Ms. Stebbins Bina first, and then I'll hear from Ms. Hendon.

MS. STEBBINS BINA: Thank you, your Honor.

This is Ms. Stebbins Bina from Latham.

So I'd like to respond to a number of different points that were just made by counsel, because I don't think they are supported by the evidence. And frankly, that's part of our concern here, is there really is just rank speculation as to the relevance of this footage.

The first is this idea that somehow because Donald J. Trump was an executive producer credited on *The Apprentice*, that line producers were reporting to him. That's not consistent with the evidence that's been presented in this case

and it's not consistent with reality. In any television production there are credited producers and they have different roles on the show.

The only evidence in the record is that the professional producers of the show were exclusively responsible for editing footage; and then none of the defendants in this case had any role in that. And that's undisputed, unrebutted evidence that's been put in in connection with this motion.

Related to that, the boardroom scenes, as anyone who watched *The Apprentice* will remember, are the scenes in which Mr. Trump -- now President Trump -- was discussing which cast member was going to be fired. So they are explaining themselves and why they did, you know, a good job on the task or a bad job on the task. They have nothing to do with representations about whatever task a partner was involved that week or the representations on the show.

The other idea that they've presented here, that somehow on the -- you know, on the air there were modifications, either they were crafting some presentation of a cast partner, is not true either.

Those scenes were scripted primarily. We've provided the scripts. We provided all the negotiations between the show's producers and ACN about what those scripts should be, the back-and-forth. We've provided 4,000 pages of correspondence, literally all the correspondence my clients

ever had with the ACN entities or their agents, that show the script's formation, show the negotiations between the lawyers, show that, you know, the defendants in this case weren't involved in it.

So the suggestion that, you know, for the 30 minutes or so that Mr. Trump might have been -- or any of the other defendants might have been in the same room with the ACN defendants -- I'm sorry, the ACN parties, while they were being filmed on scripted content -- and there's something incredibly illuminating about what I understand plaintiffs' claims to be, which is that they were not aware that there were relationships between -- contractual relationships between defendants and ACN at the time they chose to become ACN sellers. It just seems really wildly speculative that there would be anything of even the slightest relevance that could be seen in that footage.

THE COURT: Let me ask a question. Are you saying that on these unaired tapes where the defendants and ACN representatives are both on the tape, or both in the same room and it's captured on tape, that the entirety of their communications were scripted; that there was no possibility or opportunity for them to say anything that wasn't scripted?

MS. STEBBINS BINA: Your Honor, when you're filming a reality television show, there is always the possibility that somebody will say something unscripted; and certainly I think there may have been ad-libbing from time to time.

But the sections that -- as reflected in the Edwards declaration, there are really only two times that the defendants and the task partner -- in this case ACN -- would have been on set together, even in the same building. And those are the presentation of the task, and then there's a debrief at the end where they discuss the performance.

The presentation of the task is scripted. There may be a very minor variation from that script, but it's scripted. And we've already produced the scripts to the plaintiff.

The evaluation of the task isn't scripted, but it's still very -- it's a particular purpose; it's the scene at the end of the show where the cast partner -- in this case, ACN -- discusses how the two teams did at the task; did they do a good job on the commercial, did they do a bad job on the commercial, which team did better, was it the boys or the girls who had the better presentation. That takes like -- I think the call time, as we put forth in our evidence, is literally 30 minutes where they are even in the same room. And it's tightly focused on that particular task.

So the odds of there being something, you know, unique or relevant to this lawsuit is extraordinarily low to begin with. And then even if there were something, the editorial choices of the line producers of what to put on television, I just don't see how that has any bearing one way or the other on the claims or defenses in this case, because it isn't something

that any of the defendants had control over. That footage was shot, it went to the professional producers on the show, they edited it presumably to get good ratings and have compelling television. Those aren't issues in this case, to my understanding.

THE COURT: Okay. Ms. Hendon?

MS. HENDON: Nope. All of the arguments that I would have made have been made, your Honor. Thank you.

THE COURT: Okay. Can I hear from the plaintiffs.

MR. QUINN: Yes, your Honor. Thank you.

John Quinn again from Kaplan Hecker.

I'd say a few things in response.

First, it's difficult to respond on the facts of some of these points because we don't have the discovery. So when Ms. Stebbins Bina notes that certain points are unrebutted, that's simply because they've put in an affidavit and we don't have discovery with which to test any of those assertions. And, of course, the standard isn't whether we can now establish that there definitely exists some incredibly illuminating and highly relevant discovery. That's simply not the standard.

MGM has conceded that there is footage that was unaired of the defendants and ACN representatives in a room. They have conceded there was some ad-libbing. Of course, there are also -- there's also footage of both defendants and ACN separately communicating with contestants and others. And all

of that was in the context of ACN as a corporate sponsor and its business, therefore being a subject of discussion.

I think if there were emails between the defendants themselves and ACN executives from this time period immediately surrounding the filming of the seminal and important episodes, I think there's no question that those emails would be a proper subject of discovery.

So I think that the only complicating factor here is the format and the method of retention which presents purely a burden issue and one that we've addressed fully, both by agreeing to accommodate MGM and be reasonable in our approach to these issues, our agreement to cover all of their costs, and the protective order that has been entered into (inaudible) addresses the confidentiality (inaudible).

THE COURT: I'd like to just inquire about the comparison you just made with emails.

I could see footage that was clearly highly relevant, and footage that ends up not being relevant. And you're right, the test isn't for you to establish at this point the high probative value of what you're -- or on the other hand, the relevance is part of the balancing test. And I guess if we were talking about search terms, for example, and burden, if there were a search term that would greatly increase the burden, but seemed to be of limited probative value, I could see ruling that perhaps that was just too burdensome.

But my real question is this: I think you make a good point that you don't really have discovery here. Were you planning to take discovery of the MGM entities, in addition to what you already have?

MR. QUINN: I don't believe at this point that there's any outstanding discovery we are seeking from MGM other than this category of unaired footage. Other than that, we've been able to reach agreement with respect to documents and all other issues. So there are no other open discovery issues.

THE COURT: What I mean is, for example, you might want to take somebody's deposition about the editorial process over there and the editorial input that the executive producer and the other defendants may have had. And that would be helpful in itself, regardless of what the answers were, I mean it's helpful to one side or the other. But it might also shed some light on this request for unaired footage.

What's your reaction to that?

MR. QUINN: I certainly take the Court's point. I think -- I have two reactions.

First, notwithstanding the editorial issues, the fact would still remain that this is recording of conversations between the key players at a key moment about how ACN's business will be presented to a national audience. So a record, a recording of those conversations is relevant separate and apart from the editorial issues.

And then I think that the format of storage where these recordings simply exist -- they are designated by episode, but otherwise they are simply a pile of footage -- makes it harder for us to narrow the requests any more than we already have, which was to narrow to unaired footage recorded in connection with these two episodes. So while certainly one of the targeted (inaudible) and limited as possible, I'm not sure that we can, absent just reviewing the footage at this point.

THE COURT: Would your client be amenable to basically be spending the time going through the footage? I mean I understand there are other logistical issues, but you more or less agreed to pay for these by renting the equipment and putting it somewhere.

But would your client or you, I guess, be amenable to paying for -- or forget paying, for reviewing the hundreds of hours of footage relating to these two episodes to figure out what is relevant?

And then I guess the related question is, you know, we've heard from counsel for the MGM entities that they have contractual restrictions on who can be shown what, although that was said at a very high level of generality.

What is your thought about that? I'm just trying to figure out how to solve this in a way that's fair to everybody.

MR. QUINN: Sure. I appreciate that and appreciate

the question.

To the Court's first question, absolutely yes, we are prepared and willing to undertake the review and then to meet and confer about any pieces of the footage that we believe are relevant or are proper discovery, to then meet and confer with MGM to try to reach some agreement on what set of materials, you know, is proper discovery. So absolutely yes on that. And, of course, we will be accommodating in every way possible to minimize the burden on MGM and, in view of the current COVID-19 pandemic, to do this in a way that is healthy and safe for all involved. So absolutely yes on that question.

As to the second question, I think that this is a sort of a new argument from MGM. I don't recall them raising previously specific contractual agreements with some of the contestants and confidentiality issues. I think my initial reaction to that is that the protective order in place provides appropriate protection. This is, of course, you know, somewhat commonplace that materials produced in litigation subject to a confidentiality order, you know, have contractual confidentiality commitments associated with them.

So my initial reaction is that the protective order would be an answer to those concerns; but, of course, we are prepared to meet and confer on that too.

THE COURT: I guess --

MS. STEBBINS BINA: Your Honor?

THE COURT: (Inaudible) they may be contractually prohibited from sharing certain information without getting the permission of people. And I'm not sure that addresses the protective order.

So here's what I'm going to do: I find that the material is relevant because of largely arguments that we've heard from the plaintiff. I'm not going to repeat the arguments. What I hear and understand is that there may be logistical issues.

What I would like you to do is meet and confer about overcoming those logistical issues, because it seems to me appropriate that the tapes from these two episodes be made available to the plaintiffs. They are willing to go through all of them. If the better way to proceed is for the MGM entities to go through them first, that's something that needs to be explored.

And so I'd like you to go back and talk to each other more about the contractual constraints, how MGM would really like to handle this, and then present it to me, and I'll make a final ruling. Because I feel like there's still areas that need to be explored here.

MS. STEBBINS BINA: Your Honor, may I ask a brief clarifying question? And it may be that this is part of our meet and confer.

This is Ms. Stebbins Bina.

My understanding prior to five minutes ago has been that plaintiffs were only seeking those portions of the tapes where the -- where the ACN representatives were on screen either with or without the defendants in this case. It seems like they may now be seeking all of the unaired footage for the episodes. I'm not sure --

THE COURT: Can I interrupt?

That was my idea. Your complaint was we can find all the footage for these two episodes, and it is too burdensome for us to pick out what is precisely relevant, and therefore we don't want to produce anything.

And so what I wondered is whether that burden could be shifted to the plaintiffs, to have them go through the hundreds of hours of tapes to pick out what is relevant, and then relieve you of some of that burden.

MS. STEBBINS BINA: I understand, your Honor.

I think because of the contractual issues that I raised earlier, as well as other contestant privacy issues, it would probably be -- notwithstanding the burden -- better for us to go through them in the first instance.

But I just wanted to make sure that your Honor hadn't made a broader ruling that every scrap of footage was relevant to the case. It seems like your Honor is willing (inaudible) regarding relevance, relates to those portions where the ACN persons are filmed.

THE COURT: Since that's what they asked for and that is what seems most relevant, I'm happy to focus on that.

And I wondered -- and thank you for clarifying -- whether you might decide, on balance, that you would rather bear the burden of going through the tapes and finding the relevant portions versus having to deal with the complications of having the plaintiffs bear that burden, because they are relative burdens.

So in light of that, what I'm going to rule then is that to basically grant the plaintiffs' motion to compel the tapes. I find that they are highly relevant for the reasons that the plaintiffs have put on the record. Although I recognize there is some burden, it seems to me that the burden is surmountable and, in some ways, better or preferable to the burden of approaching this in some other way.

And so that's my ruling.

I think we have already dealt with the anonymity issue, which was the last issue. And so that is my agenda.

Is there anything else we must discuss today? I know we've been going for quite a while.

MR. QUINN: Nothing further from plaintiffs, your Honor.

THE COURT: Thank you.

MS. STEBBINS BINA: This is Ms. Stebbins Bina.

The only clarifying question I have -- and this may

not be necessary -- I'm not sure what the discovery cutoff is in this case, being a nonparty. I do anticipate it will be a month or more before our clients can even access the office, most likely two months. I assume that that won't be an issue if the production timeline is necessitated to be later because of COVID-19.

THE COURT: The unfortunate reality for reasons well beyond this case are that we all are constrained by COVID-19. And so I'm not going to be unreasonable about that.

And so all I'd ask is you confer with the plaintiffs, and both sides do the best you can and be reasonable and sensitive to people's needs during this time.

So thank you, everyone. Thank you for your patience.

I will issue a written order. To the extent it differs from anything I've said on the transcript, please follow the order and not what I have said.

Thank you. Have a good day. Bye. Be safe.

MR. QUINN: Thank you, your Honor.

MS. STEBBINS BINA: Thank you, your Honor.

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